IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL B. MCFADDEN	:	CIVIL ACTION
	:	
v.	:	
	:	
STATE FARM INSURANCE COMPANIES	:	NO. 99-1214

MEMORANDUM AND ORDER

HUTTON, J. September 13, 1999

Presently before the Court are Plaintiff's Motion to Remand (Docket No. 3) and Defendant's opposition thereto in addition to the Defendant's Motion to Dismiss (Docket No. 2). For the reasons to follow, the Court grants the Plaintiff's Motion to Remand and denies the Defendant's Motion to Dismiss due to a lack of subject matter jurisdiction.

I. BACKGROUND

Plaintiff, Michael B. McFadden, filed a complaint against Defendant, State Farm Insurance Companies ("State Farm"), seeking payment under his property insurance policy for damage allegedly caused by vandalism. Defendant denied a portion of the claim and a dispute ensued. Plaintiff originally filed its complaint in the Court of Common Pleas of Delaware County as an arbitration matter averring compensatory damages and a claim for bad faith damages under title 42 section 8371 of the Pennsylvania Consolidated Statutes. Specifically, the complaint's ad damnum clause prayed

for relief "in an amount less than Fifty Thousand ($50,000) dollars." Defendant, State Farm, removed the claim to this Court asserting that the amount in controversy exceeds the diversity jurisdiction threshold of an amount greater than $75,000, exclusive of interest and costs. See 28 U.S.C. § 1332(a) (1999). Defendant bases its representation upon the presence of a claim for bad faith and punitive damages under title 42 section 8371 of the Pennsylvania Consolidated Statutes. (Def.'s Notice of Removal ¶ 10).

II. Standard of Review

Generally, a Defendant may remove a civil action filed in state court if the federal court would have original jurisdiction to hear the matter. See 28 U.S.C. § 1441 (1999); see also Boyer v. Snap-On Tools Corp., 913 F.2d 108, 111 (3d Cir. 1990). Once a case is removed, the federal court may remand if there has been a procedural defect in removal, or if the court determines that it lacks federal subject matter jurisdiction. See 28 U.S.C. § 1447(c)(1999). Courts strictly construe the removal statute and resolve all doubts in favor of remand. See Boyer, 913 F.2d at 111. In removal cases, the burden of establishing the amount in controversy rests on the Defendant. Meritcare Inc. v. St. Paul Mercury Ins. Co., 166 F.3d 214, 222 (3d Cir. 1999); Boyer, 913 F.2d at 111; Feldman v. New York Life Ins. Co., No. CIV.A.97-4684, 1998 WL 94800, at *3 (E.D. Pa. Mar. 4, 1998). While not specifically

articulated by the Third Circuit, this Court has previously stated that the applicable standard of proof attributable to the Defendant is one of a preponderance of the evidence in the context of a motion to remand. Feldman, 1998 WL 94800, at *3-4; see Mercante v. Preston Trucking Co., No. CIV.A.96-5904, 1997 WL 230826, at *2 (E.D. Pa. May 1, 1997) (analyzing the circuit split and arriving at the preponderance standard).

III. DISCUSSION

Defendant's Notice of Removal invokes the Court's diversity jurisdiction. In diversity a district court has jurisdiction over a civil action if the parties are citizens of different states and the amount in controversy exceeds $75,000, exclusive of interest and costs. See U.S.C. § 1332(a). The parties in this matter do not dispute the existence of diversity of citizenship, rather the relevant dispute is whether the amount in controversy exceeds the requisite $75,000.

Plaintiff's complaint which was filed as an arbitration matter in the Court of Common Pleas of Delaware County specifically avers a demand for judgment "in an amount less than Fifty Thousand ($50,000) dollars." The complaint contains a claim for bad faith under title 42 section 8371 of the Pennsylvania Consolidated Statutes and a claim for "specific performance." Defendant asserts that Plaintiff's claim for bad faith and punitive damages places the case above the jurisdictional threshold. (Def.'s Notice of

Removal ¶ 10; Def.'s Mem. in Opposition of Remand at 2-7). In so asserting, Defendant relies on the opinion of this Court in Feldman v. New York Life Ins. Co., 1998 WL 94800, at *1. This Court held in Feldman that although Plaintiff's ad damnum clause stated that damages do not exceed $75,000, inclusive of punitive damages, this alone was insufficient to defeat Defendant's statutory right of removal. See Feldman, 1998 WL 94800, at *5. The circumstances of said decision are analytically distinct from the matter now before this Court. In Feldman the Plaintiff filed the original complaint with the Court of Common Pleas, however, the matter was not filed as an arbitration matter and thus no monetary jurisdictional limitation was potentially imposed.[1] Feldman, 1998 WL 94800, at *1. Further, this Court in Feldman determined by a preponderance of the evidence that Defendant successfully demonstrated that Plaintiff's claim reasonably exceeded $75,000 and that the limiting ad damnum clause was simply an attempt to manipulate federal jurisdiction.[2] Feldman, 1998 WL 94800, at *4-5.

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[1] See 42 Pa. Con. Stat. § 7361(b)(1998) which limits compulsory arbitration awards to a maximum of $50,000.

[2] In Feldman the Court concluded that the full value of the Feldmans' insurance of $360,000 was in dispute. This fact plus the punitive damages claim was considered in the Court's evaluation. Thus, the availability of punitive damages alone was not dispositive in the valuation of the Plaintiff's claim. See Feldman, 1998 WL 94800, at *4.

A. The Plaintiff's Ad Damnum Clause

In the current matter before this Court, Plaintiff's complaint was originally filed as an arbitration matter with the Court of Common Pleas. In doing so, Plaintiff attempts to limited its recovery below the diversity threshold as title 42 section 7361(b) of the Pennsylvania Consolidated Statutes limits recovery in arbitration cases to a maximum of $50,000.[3] Other courts have reached similar conclusions. See Gottehrer v. State Farm Ins. Co., No. CIV.A.96-1663, 1996 WL 210808, at *1 (E.D. Pa. Apr. 30, 1996); Nelson v. Kmart Co., No. CIV.A.96-2411, 1996 WL 257343, at *2 (E.D. Pa. May 14, 1996); DiFilippo v. Southland Corp., No. CIV.94-2650, 1994 WL 273310, at *1-2. (E.D. Pa. June 21, 1994).[4] While the

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[3] 42 Pa. Con. Stat. § 7361(d) allows for an appeal for trial de novo after an arbitration award. Theoretically, this would allow a Plaintiff to recover an award in excess of the $50,000 limitation and possibility in an amount greater than $75,000. Such a possibility is however speculative at best, "[e]ven though actual damages may not be established until later in the litigation, the amount in controversy is measured as of the date of removal...." Meritcare, 166 F.3d at 217. Thus, the existence of a possibility of appeal does not assist the Defendant in demonstrating by a preponderance of the evidence the present existence of the requisite amount in controversy.

[4] At least two decisions have concluded that a prayer for relief that specifies damages are not to be in excess of $50,000 did not preclude the Defendant's removal from arbitration. See Williams v. World Rio Corp., No. 95-CV-4704, 1995 WL 582002 (E.D. Pa. Oct. 3, 1995); Lumsden-Lockley v. World Rio Corp., No. CIV.A.95-5997, 1995 WL 686050 (E.D. Pa. Nov. 15, 1995). In each of these cases the Plaintiff expressly reserved the possibility of additional damages.

In Williams, the Plaintiff sought "an amount not in excess of Fifty Thousand ($50,000) Dollars each for purposes of arbitration only." 1995 WL 582002, at *1. In Lumsden-Lockley, the Plaintiff claimed an award "in an amount not in excess of arbitration jurisdiction limits . . . and in excess of such limits thereafter." 1995 WL 686050, at *1. Each of these situations are distinctly different from the matter at hand as Plaintiff makes no such reservations, nor does he express any intention to recover more than the jurisdictional limit.

designation of the complaint as an arbitration matter does not determine the amount in controversy, it is at least helpful in evaluating the actual amount in controversy set forth by the Plaintiff's complaint.

As discussed, arbitration matters in Pennsylvania Common Pleas Court are limited to a maximum of $50,000. Plaintiff's demand for judgment is phrased as "in an amount less than Fifty Thousand ($50,000.00) Dollars." Unlike in Feldman where the Plaintiff's prayer for damages was specifically set at the jurisdictional threshold of less than $75,000, thereby clearly evidencing an attempt to manipulate federal jurisdiction, such is not the case in this matter. See Feldman, 1998 WL 94800, at *3, *5. Plaintiff's $50,000 claim for damages if far below the $75,000 jurisdictional limit. A reasonable reading of Plaintiff's complaint does not evidence an attempt to manipulate federal jurisdiction through artful pleading; rather it appears reasonable that the amount in controversy may be $50,000 or less.

This court, however, is not holding that federal jurisdiction can be limited by an ad damnum clause alone. Where an independent appraisal of Plaintiff's complaint suggests a claim that is actually greater than the jurisdictional threshold, the plaintiff cannot defeat removal by merely pleading damages "not in excess of" the jurisdictional threshold. See Feldman, 1998 WL 94800, at *7.

B. The Defendant's Burden in Removal

The Defendant as the removing party is required to demonstrate that the amount in controversy exceeds the jurisdictional threshold. Meritcare, 166 F.3d at 222. The court must determine the amount in controversy from the complaint itself, Angus v. Shiley Inc., 989 F.2d 142, 145 (3d Cir. 1993), making an independent appraisal of the claim, whereby "the amount in controversy is not measured by the low end of an open-ended claim, but rather by a reasonable reading of the value of the rights being litigated." Id. at 146. Such consideration includes both compensatory damages and potential punitive damages. Feldman, 1998 WL 94800, at *4; Agnus, 989 F.2d at 146. This court has adopted the intermediate standard of a preponderance of the evidence in making this determination. Feldman, 1998 WL 94800, at *3; see, e.g., Burkhardt v. Contemporary Services Corp., No. CIV.A.98-2911, 1998 WL 464914, at *2 (E.D. Pa. Aug. 7, 1998) (discussing the three available standards).

Plaintiff's complaint raises two counts, one for compensatory damages resulting from State Farm's alleged failure to pay policy benefits pursuant to the Plaintiff's policy of insurance and another for statutory damages for bad faith under title 42

section 8371 of the Pennsylvania Consolidated Statutes.[5] Plaintiff's claimed compensatory damages total only $16,550 (Pl.'s Compl. at ¶ 32(a)-(b)), which is well below the requisite diversity threshold. Thus, for Defendant to properly assert diversity jurisdiction this Court must determine by a preponderance of the evidence that Plaintiff's complaint reasonably asserts a bad faith claim in excess of $58,450.

In Teller v. Equitable Life Assurance Soc'y, this court held that a claim for bad faith and punitive damages under title 42 section 8371 of the Pennsylvania Consolidated Statutes failed to state a specific amount and was therefore open ended.[6] No. 98-3382, 1998 U.S. Dist. LEXIS 15500, at *10 (E.D. Pa. Oct. 2, 1998). However, "an open-ended claim . . . fails to answer the amount in controversy inquiry." Meritcare, 166 F.3d at 217. Thus, considering the present Plaintiff's complaint as open ended with respect to bad faith damages does not alone satisfy the Defendant's

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[5] In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may take all of the following actions:

(1) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%.
(2) Award punitive damages against the insurer.
(3) Assess court costs and attorney fees against the insurer.

42 Pa. Con. Stat. § 8371 (1998)

[6] While not addressed in Teller, this Court considers Plaintiff's demand for bad faith damages to be open ended as Rule 1021(b) of the Pennsylvania Rules of Civil Procedure requires that "any pleading demanding relief for unliquidated damages shall not contain any specific sum." Pa. R. Civ. P. 1021(b).

burden of showing the amount in controversy by a preponderance of the evidence.

In Mercante, an opinion in which this court relied in adopting the preponderance of the evidence test, Judge Reed found that the Defendant must offer evidence regarding the reasonable value of a punitive damages claim. 1997 WL 230826, at *3 n.5. The mere possibility that the reasonable value of bad faith damages may exceed $75,000 when combine with the compensatory damage claim is insufficient to establish that the complaint meets the jurisdictional requirement. See Mercante, 1997 WL 230826, at *3 n.5. To decide otherwise would in effect be applying the lesser standard of "reasonable probability," which this Court has not adopted. See Feldman, 1998 WL 94800, at *3-4; see also Mercante, 1997 WL 230826, at *3 n.4 & n.5.

For the Defendant to meet its burden, evidence must be provided regarding the reasonable value of the rights being litigated, including any punitive damages claim. See Diloreto v. CNA Ins. Co., No. CIV.A.98-3488, 1998 WL 962024, at *4 (E.D. Pa. Dec. 18, 1998) (requiring defendant in removal action to submit information or estimates concerning defense costs in order to meet its burden of proof); see also Burkhardt, 1998 WL 464914, at *2 (discussing that in a prayer for punitive damages, the defendant may not rely merely on allegations, but must provide evidence such

as an affidavit of an expert witness on the value of the punitive damages claim).

Defendant in this matter points to nothing in the complaint that evidences the reasonable value of the rights being litigated. However, in cases involving unspecified damages, the Court may examine the notice of removal in the evaluation of the claim. See Mercante, 1997 WL 230826, at *3. Unfortunately, Defendant in its Notice of Removal provides no justification other than "the amount in controversy exceeds the jurisdictional amount of $75,000, not including interest and costs, because the Complaint includes a claim for punitive damages under 42 Pa. C.S.A. § 8371." (Def.'s Notice of Removal ¶ 10). Thus, an examination of Defendant's Notice of Removal is fruitless. Additionally, Defendant in its opposition to remand has not articulated a justification or estimate, legal or otherwise, as to why the plaintiff's claim exceeds the jurisdictional limit.[7]

[7] This Court has considered in a different context the inclusion of punitive damages in the amount in controversy on several other occasions. In each case, a determination of the amount in controversy, exclusive of punitive damages, was nonetheless a significant portion of the amount determined to be in controversy because compensatory damages were reasonably greater than the amount alleged by the Plaintiff. See Feldman, 1998 WL 94800, at *4 (stating the full value of a $360,000 insurance policy was determined to be in dispute); see also Teller, 1998 U.S. Dist. LEXIS 15500, at *8, *11 (stating the amount of actual damages was worth potentially tens of thousands of dollars because the full value of the insurance contract was in dispute). Such is not the situation in this matter as Plaintiff's alleged compensatory damages are clearly determined from the complaint to total only $16,550.

For jurisdiction to be proper, the statutory Bad Faith claim would be required to exceed four and one half times the compensatory damages. Given the clear amount of Plaintiff's alleged compensatory damages, this Court cannot find the requisite amount in controversy when it requires jurisdiction to be based on a disproportionally large unspecified amount and the Defendant has not provided, nor can the court determine, a reason as to why such valuation is proper. To find otherwise would in effect automatically transform every state claim where punitive damages are requested into a federal claim when diversity of citizenship exists.

Consequently, the Defendant has not met its burden and this Court cannot determine by a preponderance of evidence that Plaintiff's claim reasonably exceeds $75,000. Such a conclusion is especially compelling given that all doubts in removal should be resolved in favor of remand. See Boyer, 913 F.2d at 111.

An appropriate Order follows.

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O R D E R

AND NOW this 13th day of September, 1999, upon consideration of the Plaintiff's Motion to Remand and the Defendant's Response, IT IS HEREBY ORDERED that the Plaintiff's Motion is GRANTED and the Defendant's Motion to Dismiss is DENIED for lack of subject matter jurisdiction.

BY THE COURT:

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HERBERT J. HUTTON, J.